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OTHER HUMAN RIGHTS ISSUES

The question of the trade, carrying and use of small arms and light weapons in the context of human rights and humanitarian norms

Working paper submitted by Ms. Barbara Frey in accordance with Sub-Commission decision 2001/120

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Introduction

1. In its decision 2001/120 of 16 August 2001, the Sub-Commission on the Promotion and Protection of Human Rights decided, without a vote, to entrust Ms. Barbara Frey with the task of preparing, without financial implications, a working paper on the question of (a) the trade and carrying of small arms and light weapons; and (b) the use of such weapons in the context of human rights and humanitarian norms for consideration at its fifty-fourth session.

2. This paper will provide a preliminary examination of violations of international human rights and humanitarian law related to the availability and misuse of small arms and light weapons. The paper will first define what is meant by small arms and light weapons and establish the scope of review. The paper will then provide a general overview of the problem of small arms followed by a review of the action taken thus far by the international community to address the problem in all its facets. The paper will then analyse in further detail the relationship between availability of small arms and human rights violations, and how current standards in international human rights and humanitarian law address those violations. The paper concludes with recommendations for action by international human rights mechanisms to begin to address the grave human rights consequences of small arms and light weapons.

I. SCOPE AND DEFINITIONS

3. This paper is an effort to begin to focus on the proliferation, availability and misuse of small arms from the human rights perspective. The paper provides a preliminary examination of three questions:

1. What is the relationship between the availability and misuse of small arms and light weapons and human rights violations?

2. How does the current body of human rights and humanitarian law address issues regarding the availability and misuse of small arms and light weapons?

3. What further action is necessary to prevent human rights abuses caused by the availability and misuse of small arms and light weapons?

4. This paper adopts the definition of small arms and light weapons used in the 1997 report of the Panel of Governmental Experts on Small Arms (A/52/298, annex). According to the Panel of Experts, small arms are those weapons designed for personal use, light weapons are designed for use by several persons serving as a crew (ibid., para. 25). The report defined:

(a) Small arms as including: revolvers and self-loading pistols; rifles and carbines; sub-machine guns; assault rifles; and light machine guns (ibid., para. 26);

(b) Light weapons as including: heavy machine guns; hand-held under-barrel and mounted grenade launchers; portable anti-aircraft guns, portable anti-tank guns, recoilless rifles; portable launchers of anti-tank missile and rocket systems; portable launchers of anti-aircraft missile systems and mortars of calibres of less than 100 mm (ibid.);

(c) Ammunition as including: cartridges (rounds) for small arms; shells and missiles for light weapons; mobile containers with missiles or shells for single-action anti-aircraft and anti-tank systems; anti-personnel and anti-tank grenades; landmines; and explosives (ibid.).

5. The term "arms transfers" refers to all arms transferred outside the control of the producing State. The term is broader than "arms trade" because it includes not only commercial sales but all exchanges of arms, including exchanges under aid programmes and military alliances, exchanges between private citizens, and other non-monetary arrangements.[1]

II. AN OVERVIEW OF THE PROBLEM OF SMALL ARMS AND LIGHT WEAPONS

6. Hundreds of thousands of men, women and children are killed or injured each year by small arms and light weapons. These weapons, which are cheap, easy to transport and easy to operate, are used to violate human rights in every comer of the globe. Small arms and light weapons have many lawful uses, including use by law enforcement to maintain the peace and for self-defence. Unfortunately, these same weapons are used by Governments, paramilitary forces and insurgent groups as the main instruments of death in armed conflict. Even in peacetime, small arms are sometimes used by Governments to terrorize and control populations, and they are also used by criminals and terrorists to commit violent acts.

7. Circulating from hand to hand throughout the globe, there are at least 550 million small arms and light weapons (hereinafter referred to as "small arms") that cause at least 500,000 deaths each year.[2] Studies indicate that for every fatal small arms-related injury, there are likely to be two to three times as many non-fatal injuries.[3] The death and injury of productive individuals places a huge burden on societies, and serves as a barrier to social and economic development. While small arms proliferation is not a new phenomenon, weapons today are available to almost anyone who has the will to obtain them. Arms strategically delivered to military or paramilitary groups during the cold war have exchanged hands many times in the years of fragmentation that followed. The human cost of such easy access to weapons is enormous.

8. Small arms are used to facilitate an entire range of human rights abuses, including rape, enforced disappearance, torture, forced displacement, and forced recruitment of children soldiers. Due to their increasing availability, small arms play a critical role in many abuses against personal dignity. Even in genocidal conflicts, where people have been hacked to death with machetes or other non-ballistic instruments, the victims are often initially rounded up with firearms. Heavily armed individuals also provide the security environment in which atrocities can be committed at will by various other means. An increase in expenditures due to deteriorating security conditions also results in decreased support for economic, social and cultural rights.

9. Civilians have become the deliberate targets of small arms-related violence during armed conflict. Small arms-related violence against civilians and non-combatants in situations of armed conflict is completely at odds with internationally recognized legal protections granted to non-combatants under international human rights and humanitarian law.[4] Despite these legal protections, a disproportionately high percentage of wartime small arms casualties are civilians.

A study in Croatia, for instance, determined that civilian deaths may have accounted for up to 64 per cent of the 4,339 fatalities studied during the war in 1991/92.[5] Another study reported that at least 34 per cent of patients in ICRC field hospitals in Afghanistan, Rwanda, Chechnya, and the border regions of Kenya and Cambodia were civilians wounded by bullets.[6] Surveys carried out in Sierra Leone showed that almost 60 per cent of all war injuries were gunshot related, and that 11 per cent of all victims were under 15, and 43 per cent were women.[7]

10. The growing availability of small arms has been associated with the increased incidence of internal conflicts (A/52/298, annex, para. 14). While accumulations of small arms alone may not create the conflicts in which they are used, the availability of small arms tends to exacerbate conflicts by increasing the lethality and duration of violence, and by increasing the sense of insecurity which leads to a greater demand for weapon (ibid., para 17). Some commentators consider the easy availability of small arms to be a "proximate cause" of armed conflict, transforming a potentially violent situation into a full-scale conflict.[8]

11. While small arms are frequently associated with armed conflict, arms-related violations occur in many other contexts. These violations are especially prevalent as a result of post-conflict insecurity, crime and banditry, and the militarization of refugee camps and camps for internally displaced persons (IDPs). Arms-related deaths and injuries do not decrease significantly even when wars come to an end. When small arms remain available in post-conflict societies, injuries and deaths continue at high levels. In El Salvador, Honduras and Guatemala, for instance, where only a small percentage of small arms were collected from former combatants, the rate of firearm-related deaths and injuries in the post-conflict era remains as high as in some of the most violent zones of armed conflict.[9]

12. The presence of small arms aggravates forced displacement patterns. With AK-47s in hand, for instance, thugs who in the past may have carried out cattle raids and looting in pastoral communities in Ethiopia, Kenya, Somalia, the Sudan and Uganda have resorted to increased levels of violence, including the use of systematic rape and killing, to drive people from their homes and communities. Communities displaced by such violence are not only directly threatened with death and injury, but the ongoing threat of violence from the availability of weapons bars them from access to food, shelter, health care, education and other basic needs.[10]

13. The militarization of refugee and IDP camps has become a serious problem for the international community. Safe havens created to aid victims of war have instead become breeding grounds for armed groups. Arms are made available at these sites by former combatants, local dealers and active militias.[11] In some cases, host governments support the flow of arms into camps that are used to launch cross-border, counter-insurgency operations. Small arms have been smuggled into camps under the direct cover of "humanitarian assistance".[12] Militarization is further heightened when refugees arm themselves against perceived or actual violence in the camps. The insecurity in the camps is a threat to regional stability, as camps become marketplaces for arms that fuel civil wars, crime and terrorism.[13]

14. Children, especially, are victims of human rights violations that result from the availability and misuse of small arms. UNICEF estimates that 2 million children were killed in armed conflict in the 1990s, many with small arms and light weapons (S/1999/957, para. 16).

An estimated 300,000 children under the age of 18 are exploited as soldiers in armed conflicts.[14] The simplicity of use of small arms turns even young children into deadly killers. A 19-year-old soldier in northern Uganda testified, "I especially know how to use an AK-47 twelve-inch, which I could dismantle in less than one minute. When I turned 12 they gave me an RPG [rocket-propelled grenade], because I had proved myself in battle".[15] Fully automatic assault rifles will fire many rounds of ammunition; an AK-47 can fire up to 600 rounds per minute. Besides being killed and injured by firearms, children are often affected by the secondary costs of armed violence, including malnutrition, disease and preventable illness.[16]

15. Small arms-related violence has had a devastating impact on the humanitarian aid community. Humanitarian workers, including United Nations civilian staff members, are increasingly at risk as targets of acts of firearm-related violence including killings, hostage-taking, sexual assault, armed robbery, and arbitrary arrest and detention. The United Nations reported that 185 civilian staff members died between 1992 and 2000, most from firearm-related violence.[17] Under threat of violence from armed militias, humanitarian agencies are often forced to turn over goods and materials that were intended for aid operations. Increasing threats to United Nations staff members have resulted in an increased focus on human security in United Nations field operations.

16. The small arms problem has implications for the fields of security and disarmament, public health, development, crime-control, humanitarian assistance and, of course, human rights. In the Millennium Report 2000, Secretary-General Kofi Annan stated that "Small arms proliferation is not just a security issue; it is also an issue of human rights and of development. The proliferation of small arms sustains and exacerbates armed conflicts. It endangers peacekeepers and humanitarian workers. It undermines respect for international humanitarian law. It threatens legitimate but weak governments and it benefits terrorists, as well as the perpetrators of organized crime."[18]

17. Policy makers concerned with the increasing violence wrought by small arms are developing various approaches to the problem. The "supply-side" approach focuses on increased accountability and government control of small arms from production through end-use certification. This approach aims at the prevention of small arms transfers to States and non-State actors that are likely to commit serious violations of human rights and humanitarian law. Proponents of this approach seek to reduce the flow of arms through various means, including sanctions, public pressure to prevent transfers to human rights violators, technical methods such as weapons-marking, and more post-transfer oversight.[19]

18. An emerging humanitarian approach to the arms proliferation issue focuses on the impacts of armed violence, especially on non-combatants and vulnerable groups. This approach starts from the assumption that many countries in conflict-ravaged areas are already saturated with small arms and that even if the "supply-side" efforts are successful at curtailing a new flow of weapons, there is still a great need to take effective steps to reduce the "demand" for such weapons and to curb their use. These steps include attention to root causes of violence, training of armed forces - including identifiable non-State armed groups - on the basic norms regarding the use of small arms, and other practical interventions.[20]

19. The following section illustrates that the efforts of States to develop regional and international standards to regulate the proliferation of small arms generally reflects the supply-side approach.

III. ACTION BY THE INTERNATIONAL COMMUNITY TO REGULATE THE TRANSFER OF SMALL ARMS AND LIGHT WEAPONS

20. Governmental authorities, alarmed by the risks to public safety and national security that have resulted from the proliferation of small arms in the post-cold war era, have begun to take some steps to regulate the transfer of small arms, particularly into the hands of non-State actors, including criminals and insurgents. Most of these efforts have been directed at the regulation of "illicit" transfers of weapons - meaning transfers that are not authorized by a State party. Unfortunately, this emerging system of regulation does not address the violence that results from "legal" transfers - including State-approved transfers of arms into situations where they are likely to be used to commit gross human rights abuses, war crimes, or crimes against humanity.

21. There are few binding international standards regarding the manufacture, transfer or misuse of small arms and light weapons. Security Council decisions to impose arms embargoes, taken under Chapter VII of the Charter of the United Nations, are binding on all Members of the Organization. Under these embargoes States are prohibited from transferring weapons to identified parties and States must also take the necessary measures to implement, apply and enforce the embargo internally as against private actors within their jurisdiction. The Security Council has imposed arms embargoes approximately 15 times since 1965. Violations against these embargoes are well documented and the Security Council has recently begun to try to improve methods of supervision.[21] Besides embargoes, the only binding international standards on firearms are in the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplement to the United Nations Convention against Transnational Organized Crime ("Firearms Protocol"), adopted in June 2001 by the General Assembly in its resolution 55/255. The Firearms Protocol is an effort to develop harmonized marking, licensing and record-keeping systems to help law enforcement and customs officials distinguish between legal and illegal weapons shipments. The Firearms Protocol does not apply to State-to-State transfers of weapons.

22. A group of Nobel Peace Prize laureates has been joined by several non-governmental organizations in proposing a Framework Convention on International Arms Transfers, setting forth a global code of conduct to regulate arms transfers. Under the Framework Convention, certain core principles would be binding on all States. The Framework Convention elaborates limitations on States' freedom to transfer arms by codifying existing rules in international law, including human rights and humanitarian norms.[22]

23. Regional organizations have also adopted some binding standards to control the dangerous proliferation of small arms. The Organization of American States (OAS) was the first regional system to adopt a treaty to prevent the illicit manufacturing of and trafficking in arms, the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials, 1997. The European Union sets forth human rights and humanitarian considerations in its requirements regarding arms transfers. The European Union's Joint Action on Small Arms, for example, commits member

States to supply small arms "only to governments (either directly or through duly licensed entities authorized to procure weapons on their behalf) in accordance with appropriate international and regional restrictive arms export criteria".[23] Among the arms export criteria considered in this Joint Action is the respect of human rights in the country of final destination.[24]

24. In addition to binding standards, there have been several significant non-binding political commitments addressing small arms, especially the illicit production and transfer of small arms. The most visible of these commitments is the Programme of Action adopted by the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (A/CONF.192/15, chap. IV), held in July 2001 in New York. The Programme of Action was a consensus agreement that remains open to interpretation by individual States. Like the Firearms Protocol, the Programme of Action focuses only on illicit transfers of small arms and light weapons. It commits States to take steps to establish adequate national controls on production, transfers and brokering activities. The Programme of Action calls for States to undertake measures to ensure reliable marking on each small arm, as well as record-keeping and tracing, stockpile security, disposal and destruction of surplus and seized weapons, and support for weapons collection and disarmament, demobilization, and reintegration. The Programme of Action commits States to a review conference in 2006.

25. While the Programme of Action is undoubtedly a step forward in the commitment of States to control illicit transfers of small arms, from a human rights perspective it is notably silent on several key issues. The Programme of Action does not address the misuse of weapons, only their transfer. The Programme of Action does not address State-to-State, or "legal" transfers of small arms that are likely to end up being used to commit serious human rights abuses. It does not prohibit arms sales by States to non-State actors. It does not call for controls on the private ownership of weapons. In fact, while acknowledging that trade in arms "sustains conflict, exacerbates violence, contributes to the displacement of civilians, undermines respect for international humanitarian law, impedes the provision of humanitarian assistance to victims of armed conflict and fuels crime and terrorism" (ibid., para. 5), the drafters of the Programme of Action assiduously avoid mentioning the term "human rights". In the words of one NGO observer at the Conference, "Clearly, most States are not prepared to put human security before national security."[25]

26. Several non-binding political commitments at the regional level have been more forthright in their consideration of human rights criteria. The 1998 European Union Code of Conduct for Arms Exports, for instance, includes human rights criteria for arms exports.[26] The OSCE Document on Small Arms and Light Weapons (2000) requires, among other measures, that member States of the Organization for Security and Cooperation in Europe avoid export licences where there is a clear risk that the small arms may be used to violate human rights and fundamental freedoms.[27]

27. Other non-binding regional commitments have taken various approaches to curb illicit trafficking in small arms, but do not make specific reference to human rights criteria regarding weapons transfers. The Economic Community of West African States (ECOWAS), for instance, adopted a moratorium in 1998 on the import, export and manufacture of light weapons.[28] The moratorium, which has no provisions for implementation at the national level, was renewed for a

second three-year period in 2001. In the Americas, the OAS Model Regulations articulate common procedures for controlling the international movement of firearms, but do not include human rights criteria.[29]

28. In summary, over the past few years there has been some progress in the development of measures to control the transfer of small arms and light weapons. While most of these efforts have been non-binding political agreements, they do offer evidence of an emerging international consensus regarding the need for regulation of, at least, illicit arms transfers. Still, States have avoided discussing many questions that are key to the protection of human rights, including how to address the correlation between the availability of arms and increased human rights abuses; how existing human rights commitments should limit arms transfers - legal or illicit - by States; how to prevent the misuse of arms by State agents; and what is the State's responsibility to prevent small arms-related violence perpetrated by non-State actors, including individuals. This paper will begin to address some of those unanswered questions.

IV. AVAILABILITY AND MISUSE OF SMALL ARMS IN RELATION TO HUMAN RIGHTS VIOLATIONS

29. The availability of small arms threatens the full realization of all human rights in times of war and in times of peace. From individual homicides to large-scale massacres, small arms have become the weapons of choice for those who abuse human rights. Most of the grave human rights violations committed by State agents - including security personnel, law enforcement and paramilitary groups acting with the complicity of the State - are committed with or facilitated by small arms. Likewise, small arms facilitate the abuses committed by non-State actors, including organized opposition groups, terrorists and criminal networks, during armed conflict or in relative peacetime. The unregulated private ownership of firearms also results in hundreds of thousands of deaths and injuries annually, and brings into question what due diligence is required of States to protect residents from firearm-related violence and its consequences.

30. The increasing availability of small arms around the world is attributed to several factors including an increase in the number of legal weapons producers in all regions of the world, the transfer of technology and manufacturing licences from existing producers, the re-circulation of weapons from existing stockpiles, and the illicit manufacture of arms. "Legal" arms all too often end up on the hands of unauthorized recipients, who use them to violate human rights. "Legal" arms are also used illegally by agents of the State to violate human rights. Transnational networks of brokers, dealers, financiers and transporters are the key players in small arms markets, yet most States do not even register them, let alone require their deals to be licensed.

31. While, in general, experts agree that the increased availability of small arms has led to increased violations of human rights and humanitarian law, there has not yet been reliable and verified data collected on the number, profile and types of violations caused by small arms. Some of the obstacles to collecting statistics on the human rights and humanitarian impacts of small arms include lack of training and funding for researchers, lack of standardized definitions and methods, and security threats to data gatherers.[30]

32. Without such data, human rights fact-finders have not been able to analyse fully the role of small arms in human rights abuses. For purposes of illustration, for instance, the author analysed the "urgent appeals" and "communications sent" contained in the 2001 report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2001/9/Add.1). The analysis revealed that in only 25 per cent (355 out of 1,425) of reported incidents was there even an indication that the violation resulted from the misuse of firearms. The Special Rapporteur identified the actual type of firearm used in very few cases. In 43 per cent (616 out of 1,425) of the reported incidents the report did not specify the cause and manner of death, or the "tools" used in the violation.

Incidents reported in the year 2000 by the Special Rapporteur on extrajudicial, summary or arbitrary executions, with reference to weapon used

Region	Shootings	Armed attacks	Unspecified	Torture and non-gun	Other	Total	% Armed	% Unspecified
Africa	60	1	234	45	46	386	16	61
Asia	80	36	86	173	47	422	27	20
Eastern Europe	7	5	52	12	0	76	16	68
Latin America	82	24	147	68	0	321	33	46
Middle East	60	0	97	16	46	219	27	44
Western Europe	0	0	0	1	0	1	0	0
Total	289	66	616	315	139	1 425	25	43

Note: Urgent appeals cases are based on incoming communications, so they do not necessarily reflect the level of killings in any particular country or region. Regional groups in the above chart are: AFRICA - Algeria, Angola, Burundi, Congo, Côte d'Ivoire. Democratic Republic of the Congo, Ethiopia, Gambia, Kenya, Namibia, Nigeria, Rwanda, Sudan, Tunisia, Zimbabwe. ASIA - Bangladesh, China, India, Indonesia, Myanmar, Nepal, Sri Lanka. EASTERN EUROPE - Russian Federation, Tajikistan, Uzbekistan. LATIN AMERICA - Bolivia, Brazil, Colombia, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Peru, Venezuela. MIDDLE EAST - Iran (Islamic Republic of), Israel, Jordan, Lebanon, Pakistan, Yemen, Palestinian Authority. WESTERN EUROPE - Spain.

33. While most arbitrary killings and other serious violations against the integrity of the person are believed to be committed or facilitated by persons carrying guns, the instruments used in the violations are almost never reported. The analysis of the report of the Special Rapporteur is just one example of the lack of attention given to the tools used to violate human rights. It appears as though small arms and light weapons are so common, and so expected, that in large part they are taken for granted, even by the human rights community.

34. Because of their lethality, small arms have the power to transform a basic violation of human rights into a profound one. With powerful firearms, a dispute can turn into a killing, an act of revenge can turn into a massacre. Researchers need to focus more on the relationship between arms availability and an increase in the numbers and gravity of human rights abuses. To facilitate further analysis of the issue, the author encourages all human rights fact-finders in the United Nations and in non-governmental organizations to undertake the collection and analysis of the number, type and profile of violations committed with small arms so that a clearer picture of the impact of these weapons will begin to emerge.

V. EXISTING HUMAN RIGHTS AND HUMANITARIAN NORMS RELEVANT TO THE AVAILABILITY AND MISUSE OF SMALL ARMS

35. The following analysis illustrates that States have existing obligations under international human rights and humanitarian law that limit to some extent their actions concerning the transfer and use of small arms. Some international obligations, such as the non-derogable requirement to protect the right to life under article 6 of the International Covenant on Civil and Political Rights, place absolute limitations on State actions involving weapons. Other obligations are less precise, but indicate evolving norms requiring (i) that States exercise due diligence by taking effective measures to prevent, prosecute and punish violations with small arms; (ii) that States take effective measures to prevent the transfer of small arms into situations where they are likely to be used to commit serious human rights abuses; and (iii) that non-State actors be held accountable for using small arms to violate fundamental principles of human rights and humanitarian law.

36. The following legal analysis will examine five different situations: (i) misuse of small arms by State agents; (ii) misuse of small arms by private persons when the State fails to exercise due diligence; (iii) misuse of small arms by State agents in armed conflict; (iv) misuse of small arms by non-State actors in armed conflict; and (v) small arms transfer with knowledge that arms are likely to be used to commit serious violations of international human rights and humanitarian law. While the primary purpose of international law is to prescribe the conduct of States, international law is evolving to account for the indisputable role of individuals and non-State actors in promoting and protecting human rights. The establishment of the International Criminal Court is the most obvious example of the trend towards developing international standards to complement national standards regarding the criminal actions of individuals and non-State actors. This trend is critical in any analysis of small arms - tools which enable individuals and organized groups to inflict tremendous violence upon people and communities. In addition to its analysis of State obligations, therefore, this working paper will examine existing legal obligations regarding arms-related violations perpetrated by individuals in situations not rising to the level of armed conflict, and by non-State actors in armed conflicts.

37. A summary of the author's analysis of human rights and humanitarian law obligations regarding small arms can be found in the chart in the annex to this working paper.

Misuse of small arms by State agents

38. States and their agents use small arms to violate fundamental human rights through actions such as intentional killings by security forces, excessive force by law enforcement, and disproportionately violent government reaction against internal disturbance. Small arms are also used to facilitate an entire range of human rights violations from rape, torture and forced displacement, to the deprivation of education and health care. The misuse of small arms to commit such violations is prohibited under existing international human rights law.

39. From its inception, the United Nations has been committed to the protection of the right to life, a right embodied in article 3 of the Universal Declaration of Human Rights and article 6 of the International Covenant on Civil and Political Rights. States may not derogate from

article 6, even in times of public emergency that threaten the life of the nation (art. 4 (2)). The State should not deprive an individual of life except pursuant to a final judgement by a competent court (art. 6 (2)).

40. The Human Rights Committee, which monitors the implementation of the Covenant, elaborated on the actions required of States to fulfil their obligations under article 6 in its General Comment 6, adopted in 1982: "... States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities." (para. 3).

41. In a further articulation of the treaty obligations described above, the United Nations has adopted specific standards to govern the use of weapons by law enforcement. These standards include the Code of Conduct for Law Enforcement Officials, adopted by the General Assembly in 1979, which provides that "law enforcement officials may use force only when strictly necessary and to the extent required for performance of their duty" (art. 3). Officers should apply non-violent means as far as possible before resorting to the use of force.

42. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990, provide clear standards of State responsibility for the use of firearms by its agents. The Principles forbid the use of firearms except in self-defence or defence of others against imminent threat of death or to prevent the perpetration of a particularly serious crime (principle 9). Officers must identify themselves, give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would risk death or serious harm to officer or others (principle 10). The Principles set forth the responsibilities of States to provide training on the standards (principle 19), to punish law enforcement officials for arbitrary or abusive use of force and firearms (principle 7), and to assist victims and inform their families when firearms are used (principle 5). The Principles have not been well integrated into the domestic laws and practice of States.

43. Case law in the United Nations, the Inter-American system and the European Court of Human Rights further defines State obligations to take steps to prevent violations of the right to life through adequate training, policies and procedures.[31] The European Court of Human Rights imposes a positive duty on States to protect life. That Court stated in *McCann v. the United Kingdom*, that "the national law must strictly control and limit the circumstances in which a person may be deprived of his life by the State. The State must also give appropriate training, instructions and briefing to its soldiers and other agents who may use force and exercise strict control over any operations which may involve the use of lethal force".

Misuse of small arms by private persons when the State fails to exercise due diligence

44. There are more guns in the hands of private persons around the world than there are in the hands of State security forces.[32] Private individuals account for about 55 per cent of the total known global stockpile of firearms, a minimum of 305 million guns.[33] While the link between accessibility of guns and levels of violence is not absolute, research shows that, in general, high

rates of gun ownership are related to increases in the incidence of arms-related violence.[34] Such violence includes both intentional and unintentional deaths and injuries. Guns end up in the hands of private persons by various means, including direct commercial sales, private transfers, government sale or transfer, and failure to disarm in post-conflict situations.

45. The United Nations has expressed its concern over the high incidence of crimes, accidents and suicides involving the use of firearms, noting the lack of appropriate regulations in many countries for the possession and storage of firearms, and the lack of training on the use of firearms.[35] Several countries currently have extremely high firearm homicide rates. Among the countries with the highest firearm deaths per 100,000 are Colombia (55.85), Brazil (26.97), Jamaica (18.72), the United States (14.05), and Estonia (10.15).[36] Tragic incidents of firearm violence in various countries, particularly in schools, have drawn public attention to the problem, but these incidents represent only a small fraction of the deaths and injuries inflicted by individuals with easy access to guns.

46. Under international human rights law, the State is responsible for violations committed with small arms by private persons who, because they are operating with the express or implicit permission of authorities, are considered to be State agents. Under this theory, the State would be responsible for failing to prevent, investigate or prosecute vigilante groups or private militias that carry out ethnic or religious massacres, or "social cleansing" of street children. There is also growing pressure to hold States accountable for patterns of abuses, such as the State's failure to establish reasonable regulation regarding the private ownership of small arms that are likely to be used in homicides, suicides and accidents; its failure to protect individuals from a pattern of domestic violence; and its failure to protect individuals from organized crimes including kidnapping and killing for ransom.

47. Article 3 of the Universal Declaration of Human Rights and article 6 of the International Covenant on Civil and Political Rights have been interpreted as requiring States to prevent acts of violence, including extrajudicial, summary or arbitrary executions, by private persons. Evidence of this interpretation can be found in the mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions which authorizes her to intervene in cases where the authorities have failed to take effective or meaningful action to prevent extrajudicial killings from taking place (see E/CN.4/2001/9, para. 7).

48. The Special Rapporteur on violence against women has been a particularly vocal proponent of the position that States must take reasonable measures to protect the fundamental rights of those within its jurisdiction from abuses by non-State actors. Private persons committing acts of violence against women frequently use firearms to carry out their abuses. In her analysis of the State's responsibility for violence against women, the Special Rapporteur noted that "States are held legally responsible for acts or omissions of private persons in the following instances: (a) the person is an agent of the State; (b) private acts are covered by provisions of a treaty obligation; (c) there is State complicity in the wrongs perpetrated by private actors; (d) State failure to exercise due diligence in the control of private actors" (E/CN.4/1995/42, para. 102). The "due diligence" standard has been generally accepted as a measure of evaluating a State's responsibility for violation of human rights by private actors (ibid).

49. In her 1996 report, the Special Rapporteur elaborated on this principle, noting that "a State can be held complicit where it fails systematically to provide protection from private actors who deprive any person of his/her human rights" (E/CN.4/1996/53, para. 32). According to the Special Rapporteur, "Complicity must be demonstrated by establishing that the State condones a pattern of abuse through *pervasive non-action* ... To avoid such complicity, States must demonstrate due diligence by taking active measures to protect, prosecute and punish private actors who commit abuses" (ibid., para. 33; emphasis added). Under this line of reasoning, it could be argued that due diligence to prevent the abuse of fundamental human rights, including the right to life, requires that a State enact reasonable regulations to limit the availability and misuse of small arms by individuals within its jurisdiction.

50. The due diligence requirement under customary international law has been expanded by international and regional human rights conventions and regional judicial decisions. For example, in the 1988 *Velasquez* case, the Inter-American Court of Human Rights imposed liability on Honduras for its lack of due diligence in preventing unexplained "disappearances", whether by the State or private actors.[37] In *Akkok v. Turkey*, the European Court of Justice held that the State violated article 2.1 of the European Convention on Human Rights[38] when it failed to take reasonable measures to avert a real and immediate risk to life. The victim, Mr. Akkok, was a Kurdish teacher who was shot and killed by unknown assailants. Mr. Akkok had received death threats before he was killed and had reported those threats to the Turkish authorities. The Court interpreted article 2.1 as involving a primary State duty to secure the right to life by putting in place effective criminal law provisions to deter crimes. The Court found that the right to life under the European Convention imposed a positive obligation on authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.

51. Further insight on a State's obligation regarding the acts of private persons can be found in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Rights and Fundamental Freedoms. According to article 2 of the Declaration, States have the primary responsibility to protect, promote and implement all human rights and States are responsible for establishing the necessary social, economic and political conditions, as well as legal guarantees, to ensure that all persons under their jurisdiction, individually and in association with others, are able to enjoy all those rights in practice. Each State must adopt legislative, administrative and other steps necessary to ensure that rights are guaranteed.

Misuse of small arms by State agents in armed conflict

52. According to many, today's weapons of mass destruction are not only nuclear or biological. They are also the hundreds of thousands of small arms that fuel armed conflicts.[39] Since the end of the cold war, the nature of armed conflict has changed dramatically. The withdrawal of military and economic support from super-Powers forced many Governments and armed groups to become more self-reliant in military and economic concerns. Major weapons transfers, including small arms transfers, once motivated by strategic geopolitical decisions, became increasingly a function of economics. Cheaply produced small arms were seen as a lucrative export for nations in need of cash. As sources of small arms manufacturing multiplied,

so did easy access to lethal weapons for deadly conflicts around the globe. Newly manufactured as well as recirculated small arms fuelled internal and international armed conflicts. In many of today's conflicts, armed groups specifically target civilians and civilian infrastructure to further their military and political ends.

53. While all sides of these armed conflicts carry out abuses with small arms, this paper will first review the State's responsibility for small arms-related violations in international and internal conflicts. In the course of international conflicts, States are known to carry out grave violations of human rights and humanitarian law with small arms. The vast majority of armed conflict since the Second World War, however, has taken place within, and not across, borders. It is in these internal conflicts that small arms have had their primacy; they are used to commit widespread atrocities against civilians and non-combatants. Examples of arms-related violations by States include: committing executions or torture of non-combatants and prisoners of war; attacking peacekeepers and humanitarian workers; committing atrocities against civilian populations in situations of occupation; forcibly relocating civilian populations; exploiting children into using small arms as child soldiers; targeting civilian supporters of opposition groups; using weapons that cause superfluous injury or unnecessary suffering; and using excessive and indiscriminate force in efforts to counter armed insurgents such as summary executions of captured combatants.

54. International humanitarian law defines the rights and duties of belligerents and provides safeguards for persons not participating in armed conflict. While human rights law generally seeks to protect individuals from abusive State action, humanitarian law was initially developed to regulate the relationship between two States, or generally equal parties.[40] Humanitarian law has taken steps to adapt to the exigencies of contemporary internal conflicts. The nature of these internal conflicts has changed the very targets of war from belligerent military opponents to the civilian communities that support and sustain them.

55. Internal conflicts pose the most significant legal and pragmatic challenges for those seeking to protect the lives of civilians. Because of the threshold determination regarding the status of the belligerents, there are obstacles to applying both international human rights and humanitarian law to non-international conflicts.[41] Under current international legal practice, however, the distinction between inter-State wars and civil wars is diminishing. In the *Tadic Interlocutory Appeal* in the International Criminal Tribunal for the Former Yugoslavia, for instance, the court stated: "Why protect civilians from belligerent violence, or ban rape, torture or the wanton destruction of hospitals, churches, museums or private property, as well as proscribe weapons causing unnecessary suffering when two sovereign States are engaged in war, and yet refrain from enacting the same bans or providing the same protection when armed violence has erupted 'only' within the territory of a sovereign State?"[42]

56. The primary sources of international humanitarian law relating to small arms include the St. Petersburg Declaration of 1868 (banning certain explosive projectiles because they uselessly increased suffering or rendered death inevitable); The Hague Conventions of 1899 and 1907 (establishing the rights and duties of formal belligerents in their military operations and limiting the choice of methods and means of injuring the enemy in an international armed conflict); the four Geneva Conventions of 1949 (offering legal protection to victims of war and providing

safeguards for persons not taking part in the hostilities); and the two Additional Protocols to the Geneva Conventions adopted in 1966 and entered into force in 1977 (extending the provisions of the Conventions to victims of international and non-international armed conflict).

57. The cardinal principles of international humanitarian law are: (i) the protection of civilian populations and civilian objects and the distinction between combatants and non-combatants; and (ii) the prohibition on causing unnecessary suffering to combatants. States do not have unlimited freedom of choice of means in the weapons they use.[43] The body of international humanitarian law also prohibits the use and transfer of certain weapons, such as blinding laser weapons and anti-personnel landmines. To the extent that small arms availability facilitates the violations of these cardinal principles, the international community has an obligation to take steps to stem the flow of such arms.

58. The Martens clause of The Hague Convention of 1899 provided a bottom line for the treatment of civilians and non-combatants in situations of armed conflict. The Martens clause was restated in Additional Protocol I of 1977, article 1, paragraph 2: "In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience."

59. States have an obligation not to use small arms to commit grave breaches of the four Geneva Conventions, including wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer of a protected person and extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly.

60. Common article 3 of the Geneva Conventions is the keystone of humanitarian law applicable in all armed conflicts. It requires humane treatment of non-combatants, specifically prohibiting violence to life and person, in particular murder, mutilation, cruel treatment and torture. The Rome Statute of the International Criminal Court restates customary international human rights norms, prohibiting crimes against humanity in peacetime or wartime (art. 7), as well as war crimes in both international and internal conflicts (art. 8).

61. **To ensure that their forces abide by obligations of international humanitarian law, States must undertake efforts to teach and promote respect for the law so that the bearers of arms understand basic rules and realize that they are expected by their own communities to observe those rules.**

62. In addition to limitations under international humanitarian law on the use of small arms, States have responsibilities under international human rights law. Even during armed conflict, the International Covenant on Civil and Political Rights protects the right to life under article 6. This non-derogable right applies regardless of the status of the victim under international law.[44]

63. In addition to the non-derogable norms protecting the right to life and freedom from torture even in wartime, the Convention on the Rights of the Child, article 38, prohibits the recruitment of children under 15 into the armed service and from taking part in direct hostilities.

The recently adopted Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict raised the minimum age to 16 for voluntary recruitment and to 18 for participation in direct hostilities and States parties to the Optional Protocol must abide by the higher age restrictions.

Misuse of small arms by non-State actors in armed conflict

64. The nature of internal armed conflict today is characterized by the involvement of a wide range of actors, including rebel and paramilitary group and criminal organizations - all of whom use small arms as their weapons of choice. Most of these non-State actors would not be able to assume any position of strength without easy access to small arms. In some areas, armed groups control significant geographic territory and serve functionally as governments over that territory. In many other situations, however, weapons are distributed among undisciplined groups, including children.

65. The accountability and obligations of armed opposition groups with regard to violations of international human rights and humanitarian law is a legal area that is still in an early phase of development. There is no international body explicitly mandated to monitor compliance with principles of international law by non-State armed groups.[45]

66. The international community has begun to recognize the serious humanitarian and national security consequences and threats to security resulting from the availability of small arms to non-State actors. The Programme of Action adopted by the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects was, in large part, an effort by States to control the production, export, import, transit or retransfer of small arms and light weapons and to keep these weapons out of the hands of non-State actors. In fact, many Governments participating in the Conference advocated a ban on transfers to non-State actors, but their proposals failed to achieve the required consensus.

67. Non-State actors use small arms to commit serious human rights violations, including genocide; mass killings; systematic rape; attacks on civilians, peacekeepers and humanitarian workers; exploitation of children by forcing them to use small arms as soldiers; forced transfer of populations; hostage-taking; and terrorism. These violations are prohibited under common article 3 of the Geneva Conventions. Common article 3 applies to all parties to a conflict, including non-State actors, and obligates them to treat non-combatants humanely, prohibiting violence to life and person, the taking of hostages and outrages upon personal dignity, including humiliating and degrading treatment. Additional Protocol II to the Geneva Conventions develops and supplements common article 3 in situations involving a State's armed forces and one or more opposition groups. Additional Protocol II does not apply to conflicts solely involving non-State armed groups, or to conflicts where the armed opposition does not exercise a degree of territorial control.[46]

68. There have been different theories proposed as to how non-State actors might be bound under customary norms of international humanitarian law. In cases where groups exercise sufficient control over a geographic territory, their obligations arise from their position as a de facto governing authority. As for groups that do not control territory, some argue that they

are bound based on their status as citizens of a State party. Others adhere to the argument that Additional Protocol II is an extension of the principles contained in common article 3, which applies to all parties to a conflict; therefore, it is intended to apply to both States and non-State actors.[47]

69. The provisions of the Rome Statute of the International Criminal Court also apply to all individuals, whether acting as State or non-State actors. The Rome Statute prohibits crimes against humanity in peacetime or wartime as well as war crimes in both international and internal conflicts. In fact, many commentators have noted the increasing convergence between human rights and humanitarian law, attributed to the influence that the human rights movement has had on the laws of war.[48] This convergence, referred to by some as the "humanization of humanitarian law", is reflected in the jurisprudence of the international tribunals. The non-derogable rights set forth in article 4 of the Civil and Political Covenant represent the core of overlapping rights protected under both human rights and humanitarian law. There remain, however, significant differences between the two bodies of law, since international humanitarian law seeks to place limits on the conduct of warring parties but, within these limits, it does not prohibit killing or suffering per se.[49] It is worth noting that the ICRC, among others, has drawn attention to the risk that widespread arms availability might jeopardize the entire fabric of international humanitarian law, which is based on the assumption that the holders of military-style weapons possess a minimum level of training, discipline and control.[50]

Small arms transfer with knowledge that arms are likely to be used to commit serious violations of international human rights and humanitarian law

70. One of the pressing unexamined questions regarding arms availability is the legal responsibility of States that transfer small arms into situations where those arms are likely to be used to commit serious violations of international human rights or humanitarian law. With the exception of specific arms embargoes imposed by the Security Council, there are no binding international standards that prohibit State-authorized transfers of arms for atrocities. Because it is largely free of international control, the current pattern of transfers of small arms, light weapons and related ammunition is a matter of urgent humanitarian and human rights concern.

71. **While primary responsibility for compliance with international humanitarian law falls upon small arms' users, States and private companies engaged in production and export bear a degree of political, moral and, in some cases, legal responsibility toward the international community for the use made of their weapons and ammunition. The responsibilities of arms transferors need to be spelled out in a more coherent fashion by the international community.**

72. There are some limitations under international law regarding arms transfers from one State to insurgent forces in another. International law prohibits States from interfering directly or indirectly in the internal or external affairs of any other State.[51] This prohibition applies to the transfer of small arms to subversive, terrorist or armed activities.[52] In the *Nicaragua Case*, the International Court of Justice found that by training, arming, equipping, financing and supplying an insurgent military force against Nicaragua, the United States had acted in breach of the

customary law not to intervene in the affairs of another State.[53] One region, the European Union, under the EU Joint Action on Small Arms, prohibits the transfer of military-style small arms to sub-State or non-State actors.[54]

73. As for State-to-State transfers of small arms, States are prohibited from aiding another State in the commission of internationally wrongful acts. That prohibition could be invoked in situations where a transferring State supplies small arms to another State with knowledge that those arms are likely to be used in a violation of human rights or humanitarian law. In 2001, the International Law Commission stated in its Draft articles on Responsibility of States for Internationally Wrongful Acts:

> "Article 16: Aid or assistance in the commission of internationally wrongful act
>
> A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:
>
> (a) That State does so with knowledge of the circumstances of the internationally wrongful act; and
>
> (b) The act would be internationally wrongful if committed by that State."[55]

The effect of this principle is to prohibit States from transferring small arms to another State knowing that the other State will use the arms in violation of international law. Some regions have already adopted human rights criteria to limit State-to-State transfers of small arms.[56]

74. States do have important obligations under international human rights and humanitarian law that could be interpreted to prohibit them from transferring small arms knowing they will be used to violate human rights. Specifically, common article 1 of the Geneva Conventions obligates States "to respect and ensure respect" for international humanitarian law. By knowingly providing arms in situations where there are likely to be violations of international humanitarian law, States are acting in breach of their duty to ensure respect for humanitarian law as required by article 1.[57] This obligation needs to be elaborated further by the international community.

75. The ICRC has recommended, for instance, the development of national and international codes of conduct limiting arms transfers based on indicators of respect for international humanitarian law. By articulating clear references to international humanitarian law, such codes would aim to reduce the availability of small arms for State and non-State actors who use them to commit atrocities.[58] The Framework Convention on International Arms Transfers is one noteworthy example of such a draft international code; it attempts to bring together existing international legal principles regarding the transfer of arms. The Framework Convention proposes to limit the transfer of arms based on certain established criteria, including respect for international human rights and humanitarian law.

VI. RECOMMENDATIONS FOR FURTHER ACTION AND RESEARCH

76. The proliferation and availability of military-style and other small arms is taking a tremendous human toll. Small arms are used to violate, directly and indirectly, the entire spectrum of human rights. States have begun to take steps to address the illicit transfer of small arms, but there is a pressing need to act to address the human security issues that arise out of the availability and misuse of these lethal weapons. The need to improve the protection of civilians, especially vulnerable persons, who are at risk of gun violence should be the overriding concern. The Sub-Commission can play an important role in articulating what steps need to be taken by States with regard to small arms to comply with their international human rights and humanitarian obligations, specifically to protect the non-derogable right to life. International human rights mechanisms have paid attention to the underlying violations but not to the significance of the tools used to commit those violations.

77. The above analysis indicates that there are evolving norms of international human rights and humanitarian law that require States to exercise due diligence by (i) taking effective measures to prevent, prosecute and punish violations with small arms within their jurisdiction, and (ii) taking effective measures to prevent the transfer of small arms to human rights abusers. In addition, international human rights and humanitarian law are evolving to address the accountability of non-State actors for major abuses, including abuses committed with small arms.

78. To begin to fill out the parameters of those evolving norms, the human rights community needs to gather and analyse data on the use of small arms and light weapons in human rights violations. The following recommendations suggest initial steps towards addressing the human rights dimensions of the availability and misuse of small arms.

(a) United Nations human rights bodies should encourage States to adopt national laws regarding small arms that bring them into compliance with international human rights and humanitarian law norms. Specifically, all States should incorporate into their own laws the Basic Principles on the Use of Force and Firearms by Law Enforcement. The Office of the High Commissioner for Human Rights, in cooperation with the Commission on Crime Prevention and Control, should provide technical assistance to States expressing interest in incorporating the Basic Principles into their domestic law;

(b) United Nations human rights bodies should encourage States to provide training to armed forces and law enforcement on basic principles of international human rights and humanitarian law especially with regard to weapons use, and to investigate and prosecute individuals who violate those principles;

(c) Special rapporteurs, who are entrusted by the Commission on Human Rights with the investigation of State practices regarding human rights, should seek out information and report specifically on human rights abuses committed with small arms and light weapons. The Special Rapporteur on extrajudicial, summary or arbitrary executions, in particular, should track in her annual report information regarding the cause and manner of death, and the type of weapons used in reported killings;

(d) The Human Rights Committee that implements the Civil and Political Covenant should consider drafting a General Comment under article 6 of that Covenant regarding the responsibilities of States to use due diligence to reduce the misuse of small arms and light weapons and to prevent their transfer into situations where they are likely to be used to commit serious human rights violations;

(e) The Human Rights Committee that implements the Civil and Political Covenant should ask States to report on what steps they have taken (1) to bring their law enforcement agencies into compliance with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement; (2) to prevent, prosecute and punish private actors who commit abuses; and (3) to prevent the transfer of small arms to human rights abusers by the State or private actors within its jurisdiction.

(f) All United Nations human rights treaty bodies should inquire, as part of the State reporting procedure, about transfers and misuse of small arms and light weapons that violate the treaty obligations of States Parties.

79. Because of the inherent lethality of small arms and light weapons, the availability and misuse of such weapons has an indisputable impact on the number, type and gravity of violations of international human rights and humanitarian law committed by State and non-State actors. The Sub-Commission should therefore consider requesting the Commission on Human Rights to authorize a full study on the issues involved in human rights violations with small arms and light weapons.

Notes

[1] International Committee of the Red Cross, Arms Availability and the Situation of Civilians in Armed Conflict, Geneva, 1999, p. 13 [hereinafter "ICRC Arms Availability Report"].

[2] Graduate Institute of International Studies, Small Arms Survey 2001: Profiling the Problem, Oxford University Press 2001, p. 59 [hereinafter "Small Arms Survey 2001"]. The figure of 500,000 deaths from small arms represents approximately 300,000 killed in armed conflict and 200,000 killed in peacetime each year.

[3] Robin Coupland and David Meddings, "Mortality Associated with the Use of Weapons in Armed Conflicts, Wartime Atrocities and Civilian Mass Shootings: Literature Review", British Medical Journal, vol. 319, 1999, pp. 407-410 (study confirmed that the number of people injured in conflicts is usually two to three times the number killed); World Health Organization, Small Arms and Global Health, Geneva, 2001, p. 13 (in situations of non-conflict like the United States, there is a 1:3 ratio of killed to non-fatally-injured victims).

[4] ICRC Arms Availability Report, p. 16.

[5] Ibid.

[6] Coupland and Meddings, op. cit.

[7] Peter Salama, Bruce Laurence and Monica Nolan, "Health and Human Rights in Contemporary Humanitarian Crises: Is Kosovo More Important than Sierra Leone?", British Medical Journal, vol. 319, 1999, pp. 1569-1571.

[8] See, e.g., Pirseyedi, The Small Arms Problem in Central Asia, UNIDIR, 2000; United Nations, The Impact of Armed Conflict in Children: A critical review of progress made and obstacles encountered in increasing protection for war-affected children, United Nations, 2000, p. 34 [hereinafter, "The Machel Review"].

[9] Pablo Fajnzylber, Daniel Lederman and Norman Loazya, "Crime and Victimization: An Economic Perspective", Economia, vol. 1 No. 1, 2000, pp. 219-278.

[10] Robert Muggah and Eric Berman, Humanitarianism Under Threat: the Humanitarian Impacts of Small Arms and Light Weapons, (Geneva: Small Arms Survey, 2001), pp. 3-4. In this study, commissioned by the Reference Group on Small Arms of the United Nations Inter-Agency Standing Committee, the researchers found that in the cases of Columbia, East Timor and Kenya, forced displacement is influenced by even a subjective perception of firearms-related violence.

[11] Ibid., p. ix.

[12] Small Arms Survey, 2001, p. 227.

[13] Kathi Austin, "Armed Refugee Camps as a Microcosm of the Link Between Arms Availability and Insecurity", 2002, p. 1, unpublished paper available from the author. The paper was a case study on the problem of arms flows, availability and impacts associated with the Dadaab refugee camps in north-eastern Kenya.

[14] The Machel Review, p. 5.

[15] Ibid., p. 33.

[16] Robert Muggah, "Caught in the Crosshairs: The Humanitarian Impact of Small Arms", draft chapter for Small Arms Survey, 2002, p. 9.

[17] Muggah and Berman, Humanitarianism Under Threat, pp. 4-5, the United Nations does not keep statistics on which direct injuries were suffered as a result of armed violence.

[18] Kofi Annan, "We the Peoples": The Role of the United Nations in the 21st century, United Nations, New York, 2000, p. 52.

[19] Muggah, Caught in the Crosshairs, pp. 46-51.

[20] Ibid.

[21] See, e.g. the report of the Panel of Experts established pursuant to Security Council resolution 1237 (1999) on violations of sanctions against UNITA ("Fowler Report") (S/2000/203), 10 March 2000.

[22] Arias Foundation for Peace and Human Progress, The Framework Convention on International Arms Transfers, 19 April 2002, at http://arias.or.cr/documentos/armslaw/FrameworkConvention.english.pdf.

[23] Joint Action of 17 December 1998 adopted by the Council on the basis of article J.3 of the Treaty on European Union on the European Union's contribution to combating the destabilizing accumulation and spread of small arms and light weapons (1999/34/CFSP), art. 3 (b).

[24] See European Union, Code of Conduct for Arms Exports, 8 June 1998, Criterion Two.

[25] Joost Hiltermann, "A Human Rights and Humanitarian Perspective", (Washington: Human Rights Watch), November 2001, p. 2.

[26] European Union, Code of Conduct for Arms Exports.

[27] OSCE, FSC.DOC/1/100, 24 November 2000.

[28] ECOWAS, Declaration of a Moratorium on Importation, Exportation and Manufacture of Light Weapons in West Africa (1998). ECOWAS heads of State detailed the type of weapons covered in the moratorium and the methods of implementation in a 1999 Code of Conduct.

[29] OAS, Model Regulations for the Control of the International Movement of Firearms, Their Parts, Components and Ammunition, AG/RES.1543 (XXVIII-0/98), June 1998.

[30] Muggah, Caught in the Crosshairs, p. 5.

[31] See, e.g., Human Rights Committee, General Comment 6, article 6 (sixteenth session, 1982), *Velasquez Rodriguez v. Honduras*, 4 Inter-Am.C.H.R. (Ser. C.) (1988) [hereinafter "Honduras Case"]; *Kaya v. Turkey*, Eur. Ct. H.R. (1998); *McCann and Others v. the United Kingdom*, Eur. Ct. H.R. (1994).

[32] Small Arms Survey 2001, pp. 88-89. This section of the working paper reviews the human rights obligations of States as they apply to the misuse of small arms by private persons during peacetime. Subsequent sections will discuss legal standards regarding organized non-State actors, such as armed militia groups, in the context of armed conflict.

[33] Ibid.

[34] See generally, Small Arms Survey, p. 202-03 (citing studies by Miller and Cohen, 1997; Van Dijk, 1997; Wintemute et al., 1999; Centers for Disease Control and Prevention, 1997; Kellerman, 1993).

[35] *United Nations International Study on Firearm Regulation*, United Nations Publication, Sales No. E.98.XIV.2, p.1.

[36] Ibid., pp. 108-109.

[37] Honduras Case, para. 102-04.

[38] Article 2.1 of the European Convention on Human Rights provides: "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."

[39] The Machel Report, p. 34.

[40] Theodor Meron, "The Humanization of Humanitarian Law", *American Journal of International Law*, vol. 94, 2000, p. 240.

[41] See, e.g., David Petrasek, "Moving Forward on the Development of Minimum Humanitarian Standards", *American Journal of International Law*, vol. 92, 1998, p. 561.

[42] International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law committed on the Territory of Former Yugoslavia since 1991, *Prosecutor v. Dusko Tadic*, Case No. IT-94-1-AR72, 2 October 1995.

[43] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July 1996, I.C.J. Reports 1996,* para. 75.

[44] Françoise Hampson, "Using International Human Rights Machinery to Enforce the International Law of Armed Conflicts", Revue de Droit Militaire et de Droit de la Guerre, vol. 30, 1991, p. 119.

[45] Camilla Waszink, "The Use of Small Arms in Internal Conflicts: How to Make Armed Opposition Groups Accountable", unpublished paper, 2002, available from author.

[46] Ibid.

[47] See, e.g., Antonio Cassese, "The Status of Rebels under the 1977 Geneva Protocol on Non-International Conflict", International and Comparative Law Quarterly, No. 30, 1981, pp. 416-39.

[48] See, especially, Meron, op. cit.

[49] Waszink, op. cit.

[50] ICRC, Arms Availability Report, at p. 10.

[51] See Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and Protection of their Independence and Sovereignty, General Assembly resolution 2131 (XX) of 21 December 1965.

[52] See also Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, General Assembly resolution 42/22 of 18 November 1987, annex, para. 6.

[53] *Military and Paramilitary Activities in and against Nicaragua, Nicaragua v. United States of America, Judgment of 27 June 1986, I.C.J. Reports 1986*.

[54] European Union Joint Action, at article 3 (b).

[55] Official Records of the General Assembly, fifty-sixth session, Supplement No. 10 (A/56/10), Chap. IV.E.1.

[56] European Union, Code of Conduct for Arms Experts, Criterion Two.

[57] ICRC Arms Availability Report, p. 64; Emanuela Gillard, "What is legal? What is illegal? Limitations on Transfers of Small Arms under International Law", Lauterpacht Research Centre for International Law, Cambridge, 29 April 2002, at http://www.arias.or.cr/fundarias/cpr/armslaw/egillard.html.

[58] ICRC Arms Availability Report, p. 65.

Annex

Selected sources of international human rights and humanitarian law that limit the transfer and misuse of small arms and light weapons

Situation	Examples of violations	Applicable law
1. Misuse of small arms by State agents	– Genocide – Intentional killings by security forces – Excessive force by law enforcement – Disproportionately violent government reaction to disturbances – Systematic rape – Torture – Forced displacement – Deprivation of basic human needs	– Universal Declaration of Human Rights, art. 3 – International Covenant on Civil and Political Rights (ICCPR), art. 4 (2) – ICCPR, art. 6 – Convention on the Prevention and Punishment of the Crime of Genocide ("Genocide Convention") – Code of Conduct for Law Enforcement Officials, art. 3 – Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
2. Misuse of small arms by private persons when the State fails to exercise due diligence	– Ethnic, religious, or social massacres – Failure to prevent criminal homicide – Failure to prevent domestic violence – Failure to prevent crimes committed post-conflict by individual owners of small arms – Terrorism	– Universal Declaration of Human Rights, art. 3 – ICCPR, art. 6 – "Due diligence" standard, Inter-American Court of Human Rights, European Court of Human Rights – Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Rights and Fundamental Freedoms, art. 2 (1), 2 (2)

Situation	Examples of violations	Applicable law
3. Misuse of small arms by State agents in armed conflict	– Genocide – Committing executions or torture of non-combatants and prisoners of war – Attacking peacekeepers and humanitarian workers – Committing atrocities against civilian populations in situations of occupation – Forcibly relocating civilian populations – Using weapons that cause superfluous injury or unnecessary suffering – Using excessive and indiscriminate force in efforts to counter armed insurgents such as summary executions of captured combatants – Exploitation of children as soldiers – Indiscriminate use of weapons – Use of weapons that cause superfluous injury or unnecessary suffering – Crimes against humanity, and war crimes	– Treaty bans on specific weapons: St. Petersburg Declaration (1869) (exploding projectiles) – The Hague Declaration (1899) (dum dum bullets) – Geneva Conventions of 1949, common article 3 – Additional Protocol II to the Geneva Conventions, and relating to the Protection of Victims of Non-International Armed Conflicts – Genocide Convention – Rome Statute of the International Criminal Court – ICCPR, arts. 6, 7 – Convention on the Rights of the Child, art. 38 – Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Situation	Examples of violations	Applicable law
4. Misuse by non-State actors in armed conflict	– Genocide – Mass killings – Systematic rape – Attacks on civilians, peacekeepers and humanitarian workers – Exploitation of children as soldiers – Forced displacement of populations – Hostage-taking – Terrorism	– Geneva Conventions of 1949, common article 3 – Additional Protocol II to the Geneva Conventions, and relating to the Protection of Victims of Non-International Armed Conflicts – Genocide Convention – Rome Statute of the International Criminal Court
5. Arms transfer with knowledge that arms are likely to be used to commit serious violations of international human rights and humanitarian law	– Violation of Security Council arms embargo – Transfer to insurgent group in another State – Transfer to a State identified as having a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms – Transfer to a State that uses child soldiers – Transfer to a State unable to control post-conflict violence – Transfer to a State known to violate international humanitarian law norms in situations of armed conflict	– Charter of the United Nations, Chapter VII (arms embargoes) – Geneva Conventions of 1949, common article 1 – United Nations Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and Protection of Their Independence and Sovereignty – Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations – International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts